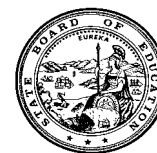


**CALIFORNIA DEPARTMENT OF EDUCATION****JACK O'CONNELL**, State Superintendent of Public Instruction

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1430 N Street Sacramento, CA 95814

November 5, 2004

Ray Simon, Assistant Secretary  
Office of Secondary and Elementary Education  
United States Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202

Dear Assistant Secretary Simon:

Pursuant to Public Law 107-110, Part D – Waivers, Section 9401(a), the California Department of Education (CDE) and State Board of Education (SBE) request a partial waiver from the following requirements of the *No Child Left Behind* (NCLB) Act:

- Title I, Section 1111(b)(7), “Each state plan shall demonstrate that local educational agencies in the State will, beginning no later than school year 2002-2003, provide for an annual assessment of English proficiency (measuring oral language, reading, and writing skills in English) of all students with limited English proficiency in the schools served by the State educational agency ...”
- Title III, Section 3121(d), “A State shall approve evaluation measures for use under subsection (c) that are designed to assess – the progress of children in attaining English proficiency, including a child's level of comprehension, speaking, listening, reading, and writing skills in English.”

CDE's “Consolidated State Application, September 1, 2003 Submission” (pages 7-8) indicated that students in kindergarten and grade 1 are currently assessed only in listening and speaking. A timeline was provided for CELDT modifications (adding reading and writing tests to kindergarten and first grade) for compliance with NCLB. CDE now wishes to amend the plan, retract the timeline, and request a waiver for testing English proficiency in reading and writing in kindergarten and first grade.

CDE's English proficiency evaluation measure, the California English Language Development Test (CELDT), assesses listening, speaking, and comprehension skills in kindergarten through grade 12, and assesses reading and writing skills in grades two

through twelve. (The assessment of comprehension is derived from the assessment of listening in kindergarten and first grade, and from listening and reading in second through twelfth grade.) CDE requests a waiver of the requirement to assess reading and writing skills in kindergarten and first grade.

Waiving this requirement will improve the quality of instruction and academic achievement for students in kindergarten and first grade. For students in these grades reading and writing skills are relatively undeveloped and the constructs, as related to language proficiency, are difficult to assess. Currently, CDE's other assessment programs do not apply to these grades. Reading and writing tests for very young children are difficult to design and administer. The one-on-one administration of reading and writing tests, essential in view of the young age and lack of testing experience of young children, will be very intrusive to instructional time and will significantly increase the burden and expense of administering the CELDT. Instruction, not testing, is a more productive use for these resources. The information obtained from an attempt to assess reading and writing skills of these students may well not meet commonly accepted professional technical standards for reliability and validity. Such information would not be useful, and might be detrimental to instruction and academic achievement.

The educational goal affected by this waiver is improvement in English language proficiency and academic achievement. CDE will continue to assess students in kindergarten and first grade with the listening and speaking parts of the CELDT and will continue to use these results to monitor improvement in English language proficiency. The waiver will assist CDE and local educational agencies in attaining these goals as follows: (1) focus more state and local resources on instruction, not testing, (2) focus more attention on the more reliable and valid results of the listening and speaking tests, and (3) avoid increasing the burden of testing and administrative costs to the local education agencies.

Thank you for consideration of our request. We look forward to receiving your written response. Should you or your staff have any questions, please contact Mark Fetler, Manager of the California English Language Development Test, California Department of Education at (916) 319-0562.

Sincerely,

JACK O'CONNELL  
State Superintendent of Public Instruction

RUTH E. GREEN, President  
State Board of Education

JO/RG:mf